

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERWIN TERRIEL SHELTON,

Petitioner,

v.

CASE NO. 04-CV-70642-DT
HON. JOHN CORBETT O'MEARA

FABIAN LAVIGNE,

Respondent.

ORDER DENYING PETITIONER'S
MOTION FOR RELIEF FROM JUDGMENT

Petitioner Sherwin Terriel Shelton has moved for relief from judgment. The “judgment” in question is the Court’s order dated October 14, 2005, wherein the Court denied Petitioner’s motion to extend the deadline for appealing the Court’s dispositive opinion denying his habeas corpus petition. Petitioner alleges that he was unaware of the Court’s dispositive opinion until September 7, 2005, when he received a copy of the docket entries in this action.¹ He wants the Court to re-enter its dispositive opinion and order dated January 7, 2005, or to grant an extension of time to file a notice of appeal.

Under Federal Rule of Appellate Procedure 4(a)(6), the Court may re-open the time for taking an appeal if a request is made within 180 days after the judgment or order is entered or within 7 days of receiving notice of the entry, *whichever is earlier*. As the Court explained in its previous order, the 180-day deadline expired before Petitioner requested an extension of time to

¹ Petitioner alleges that, to date, he still has not received a copy of the Court’s opinion denying his habeas petition.

file his appeal, and the 180-day deadline trumps the 7-day deadline, because it was the earlier of the two dates in question. *Wilkins v. Johnson*, 238 F.3d 328, 332 (5th Cir. 2001); *Nurock v. Barnhart*, 281 F. Supp. 2d 256, 257 (D. D.C. 2003).

Therefore, Petitioner is not entitled to re-entry of the opinion and order dated January 7, 2005, or to an extension of time to file a notice of appeal. His motion for relief from judgment [Doc. #27, Dec. 5, 2005] is DENIED. The Clerk of Court is directed to mail a copy of this order and a copy of the Court's opinion and order dated January 7, 2005, to Petitioner.

s/John Corbett O'Meara
United States District Judge

Dated: July 14, 2006

Certificate of Service

I hereby certify that a copy of this Order was served upon Petitioner by ordinary mail and counsel of record by electronic means on July 14, 2006.

s/William J. Barkholz
Deputy Clerk